

United States a report summarizing the activities of the divisions, including the Circuit Division, and evaluating the effectiveness and efficiency of the divisional structure. The Judicial Conference shall submit recommendations to Congress concerning the divisional structure and whether the structure should be continued with or without modification.

**SEC. 2. ASSIGNMENT OF JUDGES; PANELS; EN BANC PROCEEDINGS; DIVISIONS; QUORUM.**

(a) IN GENERAL.—Section 46 of title 28, United States Code, is amended to read as follows:

**“§ 46. Assignment of judges; panels; en banc proceedings; divisions; quorum**

“(a) Circuit judges shall sit on the court of appeals and its panels in such order and at such times as the court directs.

“(b) Unless otherwise provided by rule of court, a court of appeals or any regional division thereof shall consider and decide cases and controversies through panels of 3 judges, at least 2 of whom shall be judges of the court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. A court may provide by rule for the disposition of appeals through panels consisting of 2 judges, both of whom shall be judges of the court. Panels of the court shall sit at times and places and hear the cases and controversies assigned as the court directs. The United States Court of Appeals for the Federal Circuit shall determine by rule a procedure for the rotation of judges from panel-to-panel to ensure that all of the judges sit on a representative cross section of the cases heard and, notwithstanding the first sentence of this subsection, may determine by rule the number of judges, not less than 2, who constitute a panel.

“(c) Notwithstanding subsection (b), a majority of the judges of a court of appeals not organized into divisions as provided in subsection (d) who are in regular active service may order a hearing or rehearing before the court en banc. A court en banc shall consist of all circuit judges in regular active service, except that any senior circuit judge of the circuit shall be eligible to participate, at that judge's election and upon designation and assignment pursuant to section 294(c) and the rules of the circuit, as a member of an en banc court reviewing a decision of a panel of which such judge was a member.

“(d) (1) A court of appeals having more than 15 authorized judgeships may organize itself into 2 or more adjudicative divisions, with each judge of the court assigned to a specific division, either for a specified term of years or indefinitely. The court's docket shall be allocated among the divisions in accordance with a plan adopted by the court, and each division shall have exclusive appellate jurisdiction over the appeals assigned to it. The presiding judge of each division shall be determined from among the judges of the division in active status as though the division were the court of appeals, except the chief judge of the circuit shall not serve at the same time as the presiding judge of a division.

“(2) When organizing itself into divisions, a court of appeals shall establish a circuit division, consisting of the chief judge and additional circuit judges in active status, selected in accordance with rules adopted by the court, so as to make an odd number of judges but not more than 13.

“(3) The circuit division shall have jurisdiction to review, and to affirm, reverse, or modify any final decision rendered in any of the court's divisions that conflicts on an

issue of law with a decision in another division of the court. The exercise of such jurisdiction shall be within the discretion of the circuit division and may be invoked by application for review by a party to the case, setting forth succinctly the issue of law as to which there is a conflict in the decisions of 2 or more divisions. The circuit division may review the decision of a panel within a division only if en banc review of the decision has been sought and denied by the division.

“(4) The circuit division shall consider and decide cases through procedures adopted by the court of appeals for the expeditious and inexpensive conduct of the circuit division's business. The circuit division shall not function through panels. The circuit division shall decide issues of law on the basis of the opinions, briefs, and records in the conflicting decisions under review, unless the division determines that special circumstances make additional briefing or oral argument necessary.

“(e) This section shall apply to each division of a court that is organized into divisions as though the division were the court of appeals. Subsection (c), authorizing hearings or rehearings en banc, shall be applicable only to the divisions of the court and not to the court of appeals as a whole, and the authorization for a limited en banc procedure under section 6 of Public Law 95-486 (92 Stat. 1633), shall not apply in that court. After a divisional plan is in effect, the court of appeals shall not order any hearing or rehearing en banc, but an en banc proceeding already ordered may be heard and determined in accordance with applicable rules of appellate procedure.

“(f) A majority of the number of judges authorized to constitute a court, a division, or a panel thereof shall constitute a quorum.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 3 of title 28, United States Code, is amended by amending the item relating to section 46 to read as follows:

“46. Assignment of judges; panels; en banc proceedings; divisions; quorum.”

(c) MONITORING IMPLEMENTATION.—The Federal Judicial Center shall monitor the implementation of section 46 of title 28, United States Code (as amended by this section) for 3 years following the date of enactment of this Act and report to the Judicial Conference such information as the Center determines relevant or that the Conference requests to enable the Judicial Conference to assess the effectiveness and efficiency of this section.

**SEC. 3. DISTRICT COURT APPELLATE PANELS.**

(a) IN GENERAL.—Chapter 5 of title 28, United States Code, is amended by adding after section 144 the following:

**“§ 145. District Court Appellate Panels**

“(a) The judicial council of each circuit may establish a district court appellate panel service composed of district judges of the circuit, in either active or senior status, who are assigned by the judicial council to hear and determine appeals in accordance with subsection (b). Judges assigned to the district court appellate panel service may continue to perform other judicial duties.

“(b) An appeal heard under this section shall be heard by a panel composed of 2 district judges assigned to the district court appellate panel service, and 1 circuit judge as designated by the chief judge of the circuit. The circuit judge shall preside. A district judge serving on an appellate panel shall not participate in the review of decisions of the district court to which the judge has been appointed. The clerk of the court of appeals shall serve as the clerk of the district court appellate panels. A district court appellate

panel may sit at any place within the circuit, pursuant to rules promulgated by the judicial council, to hear and decide cases, for the convenience of parties and counsel.

“(c) In establishing a district court appellate panel service, the judicial council shall specify the categories or types of cases over which district court appellate panels shall have appellate jurisdiction. In such cases specified by the judicial council as appropriate for assignment to district court appellate panels, and notwithstanding sections 1291 and 1292, the appellate panel shall have exclusive jurisdiction over district court decisions and may exercise all of the authority otherwise vested in the court of appeals under sections 1291, 1292, 1651, and 2106. A district court appellate panel may transfer a case within its jurisdiction to the court of appeals if the panel determines that disposition of the case involves a question of law that should be determined by the court of appeals. The court of appeals shall thereupon assume jurisdiction over the case for all purposes.

“(d) Final decisions of district court appellate panels may be reviewed by the court of appeals, in its discretion. A party seeking review shall file a petition for leave to appeal in the court of appeals, which that court may grant or deny in its discretion. If a court of appeals is organized into adjudicative divisions, review of a district court appellate panel decision shall be in the division to which an appeal would have been taken from the district court had there been no district court appellate panel.

“(e) Procedures governing review in district court appellate panels and the discretionary review of such panels in the court of appeals shall be in accordance with rules promulgated by the court of appeals.

“(f) After a judicial council of a circuit makes an order establishing a district court appellate panel service, the chief judge of the circuit may request the Chief Justice of the United States to assign 1 or more district judges from another circuit to serve on a district court appellate panel, if the chief judge determines there is a need for such judges. The Chief Justice may thereupon designate and assign such judges for this purpose.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 28, United States Code, is amended by adding after the item relating to section 144 the following:

“145. District court appellate panels.”

(c) MONITORING IMPLEMENTATION.—The Federal Judicial Center shall monitor the implementation of section 145 of title 28, United States Code (as added by this section) for 3 years following the date of enactment of this Act and report to the Judicial Conference such information as the Center determines relevant or that the Conference requests to enable the Conference to assess the effectiveness and efficiency of this section.

**MESSAGES FROM THE HOUSE  
RECEIVED DURING ADJOURNMENT**

Under the authority of the order of the Senate of January 6, 1999, the Secretary of the Senate, on January 20, during the adjournment of the Senate, received a message from the House of Representatives announcing that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 11. Concurrent resolution providing for an adjournment of the House.